



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
[www.epa.gov/region8](http://www.epa.gov/region8)

AUG 15 2016

Ref: 8ENF-RC

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. R. David Gibby  
Environmental Manager  
US Magnesium LLC  
238 North 2200 West  
Salt Lake City, Utah 84116-2921

Re: Request for Information Pursuant to Section 3007 of the Resource Conservation and Recovery Act, Section 104(e) of the Comprehensive Environmental Response Compensation Liability Act, and 308(a) of the Clean Water Act; US Magnesium Facility, Rowley, Utah.

Dear Mr. Gibby:

This letter requests your cooperation in providing information regarding the US Magnesium facility located in Tooele County, Utah, approximately 23 miles northwest of Grantsville (Site), owned and operated by US Magnesium LLC (USM). The U.S. Environmental Protection Agency is investigating the identification, nature, and quantity of materials that have been generated, treated, stored or disposed of at the Site and the nature or extent of the release of a hazardous substance, pollutant or contaminant at the Site.

The EPA seeks information regarding the handling or release of hazardous waste under the provisions of section 3007(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6927(a), the release or threat of release of hazardous substances, pollutants or contaminants under section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9604, and the placement of fill material or the discharge of pollutants or toxic pollutants under section 308 of the Clean Water Act, as amended (CWA), 33 U.S.C. § 1318(a).

Pursuant to the authorities referenced above, you are hereby requested to respond to the Information Request set forth in Enclosure 1, attached hereto.

Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized by you to respond to this request. The notarized certificate must state that the response submitted to the EPA is complete and contains all documents and information responsive to this request that are known to you following a complete and thorough review of all information and sources available to you. A suggested format for the notarized certificate is included with this request as Enclosure 2.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

Please provide the requested information within thirty (30) calendar days of your receipt of this letter. Submit the requested information to David Duster and Ken Wangerud at the following addresses:

David Duster, Environmental Scientist  
US EPA Region 8, 8ENF-RC  
RCRA Technical Enforcement Program  
1595 Wynkoop Street  
Denver, CO 80202-1129


Ken Wangerud, Remedial Project Manager  
US EPA Region 8, 8EPR-SR  
Office of Ecosystems Protection and Remediation  
Superfund Remedial Program  
1595 Wynkoop Street  
Denver, CO 80202-1129

Failure to respond fully and truthfully, or to adequately justify your failure to respond, can result in an enforcement action by the EPA, pursuant to 3007(a) of RCRA, section 104(e) of CERCLA, section 309 of the CWA, 33 U.S.C. § 1319, as well as the imposition of civil penalties of up to \$37,500 per day of non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to separate criminal penalties under 18 U.S.C. § 1001.

The EPA strongly encourages you to give this matter your immediate attention and respond to the Information Request within the time specified above. If you require clarification of this request, please contact David Duster (303) 312-6665 or Ken Wangerud (303) 312-6703 with technical questions, or Andy Lensink at (303) 312-6908 or Steven Moores at (303) 312-6857 with any legal questions you may have.

Thank you for your cooperation in this matter.

Sincerely,

  
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Raymond Wixom, Utah AG  
Sandra Allen, Utah AG

**INSTRUCTIONS FOR THE INFORMATION REQUEST  
US MAGNESIUM SITE, EPA ID No. UTN000802704, SSID 08-PU**

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
2. Precede each answer with the number of the Question to which it corresponds.
3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it corresponds.
5. The information requested herein must be provided even though the Respondent may contend that it includes possible confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to:
  - a. Section 3007(b) of RCRA, 42 U.S.C. 6927(b),
  - b. Section 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F),
  - c. Section 308(b) of the CWA, 33 U.S.C. § 1318(b), and
  - d. 40 Code of Federal Regulations (CFR), part 2 and section 2.203(b).

To prove your claim for confidentiality, you must provide the following information for each document for which confidentiality is claimed:

- a. the portions of the information claimed to be entitled to confidential treatment;
- b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. measures taken by you to guard against the undesired disclosure of the information to others;
- d. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- e. pertinent confidentiality determinations, if any, by the EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
- f. whether you assert that disclosure of the information would be likely to result in substantial harmful effects on your business' competitive position, and if so, what those

harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, and that you intend to continue to do so, and that it is not, and has not been, obtainable by legitimate means without your consent. Information covered by such a claim will be disclosed by the EPA only to the extent permitted by the statutory and regulatory authorities referenced above. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you.

6. In accordance with 40 C.F. R. section 2.310(h), information that you submit in response to this Information Request may be disclosed to authorized representatives of the United States even if you assert a confidentiality claim. Please be advised that the EPA may disclose your responses to this Information Request to a private enforcement support services contractor employed by the EPA for the purpose of organizing and analyzing the response to this Information Request. The EPA contractor can only use the information for the purpose of carrying out the work required under the contract and must maintain the confidentiality of such information. See 40 C.F.R. section 2.301(h)(B). If you are submitting information you claim to be entitled to treatment as confidential business information, you may comment on this possible disclosure within fourteen days of receiving this Information Request to the EPA Enforcement Specialist identified above.

**DEFINITIONS**  
**US MAGNESIUM SITE, EPA ID No. UTN000802704, SSID 08-PU**

The following definitions shall apply to the following words as they appear in this Enclosure 1:

1. The term “arrangement” means every separate contract or other agreement between two or more persons.
2. The term “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, and can be found at Title 42, United States Code (U.S.C.), section 9601, et seq.
3. The term “CWA” means the Federal Water Pollution Control Act (or Clean Water Act), and can be found at Title 33, United States Code (U.S.C.) section 1251, et seq.
4. The terms “document” and “documents” shall mean any written, recorded or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts and all non-identical copies.
5. The term “facility” shall have the same definition as in Section 101(9) of CERCLA.
6. The term “hazardous substance” shall have the same definition as that contained in Section 101(14) of CERCLA and includes any mixtures of such hazardous substances with any other substances, including petroleum products.
7. The term “hazardous waste” shall have the same definition as that contained in Section 1004(5) of RCRA.
8. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. The term “identify” means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), and the substance or the subject matter.
10. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

11. The term “materials” shall mean all substances that have been generated, treated, stored or disposed of, or otherwise handled at or transported to the Property, including but not limited to all hazardous substances, pollutants or contaminants, hazardous wastes and solid wastes, as defined above, and mercury.
12. The term “person” shall have the same definition as in section 101(21) of CERCLA, section 1004(15) of RCRA, and section 502(5) of the Clean Water Act: an individual, trust, firm, joint stock company, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.
13. The term “arrangement” means every separate contract or other agreement between two or more persons.
14. The term “pollutant” shall have the same meaning as in section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).
15. The term “pollutant or contaminant” shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants or contaminants with any other substances, including petroleum products.
16. The term “Property” means the US Mag production facility on Skull Valley Road (also known as Grantsville Road) in Tooele County, Utah.
17. The term “RCRA” means the Resource Conservation and Recovery Act, amendments to the Solid Waste Disposal Act, and can be found at Title 42, United States Code (U.S.C.) section 6901, et seq.
18. The term “release” has the same definition as that contained in section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.
19. The term “solid waste” shall have the same definition as that contained in section 1004(27) of RCRA.
20. The term “toxic pollutant” shall have the same definition as that contained in section 502(13) of the CWA, 33 U.S.C. § 1362(13).
21. The term “Waters of the United States,” “wetlands,” and “adjacent” each shall have the same definition as in 33 C.F.R. Part 328.

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, 42 U.S.C. § 9601, et seq.; RCRA, 42 U.S.C. § 6901, et seq.; the CWA 33 U.S.C. § 1251, et seq., or their regulations, found at 40 C.F.R. Part 300 (CERCLA), 40 C.F.R. Part 260, et seq. (RCRA) and, under the CWA, at 40 C.F.R. Part 122 et seq. and 33 C.F.R. Part 323, in which case the statutory or regulatory definitions shall apply.

**QUESTIONS AND INFORMATION REQUESTS**  
**US MAGNESIUM SITE, EPA ID No. UTM000802704, SSID 08-PU**

1. Identify the owner of record of the Skull Valley Water Diversion Ditch (SVDD) or the property on which the diversion ditch is located.
2. Identify the operator, manager and entity that maintains the SVDD.
3. Describe the purpose of the SVDD and the date of construction; provide an aerial map showing where the SVDD is located.
4. Does the SVDD receive and transport precipitation runoff or other water or runoff that originates from property not owned by USM? If so, identify the owner of that property.
5. Does USM place or discharge water and/or pollutants in the SVDD? If so:
  - a. From where does that water come?
  - b. Identify the owner, if anyone, of the rights to that water.
  - c. Explain when, how often, and for what reason USM places water in the diversion ditch.
6. Has USM ever applied for or received a permit from the State of Utah for discharges from the SVDD into the Great Salt Lake or any other water body? If so:
  - a. Please provide a copy of any application and permit.
  - b. Please provide a copy of any communication with the State concerning such an application or permit.
7. Has the U.S. Army Corps of Engineers ever determined that the SVDD is a navigable water or a Water of the United States, or that the SVDD is not a navigable water or a Water of the United States? If so:
  - a. When was the determination made and by what office of the Corps?
  - b. Please provide a copy of any determination and any communications pertaining to any determination.
8. Has USM ever applied for or received a permit from the U.S. Army Corps of Engineers under Section 404 of the CWA for the placement of fill material in the SVDD? If so:
  - a. Please provide a copy of any application and permit.
  - b. Please provide a copy of communications with the Corps concerning such an application or permit.

9. Has USM ever communicated with the Utah Division of Water Resources concerning operation or maintenance of the SVDD, or concerning the placement of fill material in the SVDD? If so:
  - a. Please state when, how often, and the substance of those communications.
  - b. Please provide copies of any and all written communications.
10. Has USM carried out inspections or observations of the southern area of the CERCLA Preliminary Remedial Investigation area 5 (PRI-5) to evaluate possible failure of waste containment or migration of waste materials beyond the impoundment? If so:
  - a. When and where were such inspections or observations made?
  - b. Identify who conducted the observations.
  - c. Please provide copies of any reports of observations or inspections.
11. Has USM sampled or analyzed surface waters and sediments within or adjacent to CERCLA PRI-5, including the SVDD, or beyond, including downstream to the Great Salt Lake. If so:
  - a. When and where were the samples taken?
  - b. Identify who conducted the sampling and analysis.
  - c. Please provide a copy of sampling results and any analysis of sampling.
12. Has USM evaluated results of inspections or sampling of CERCLA PRI-5 and CERCLA PRI-14 to ascertain whether there have been unplanned releases, or the potential for releases?
13. Has USM ever observed water breaching the northern berm installed as part of the EPA Administrative Order on Consent, February 2014, issued under Section 7003 of RCRA, Docket No. RCRA-8-2014-001 (AOC)? If so:
  - a. When and where were the observations made?
  - b. Who made the observations? (Identify.)
  - c. Please provide a copy of any report or communication addressing the breach.
  - d. Describe source of water, wastewater or other liquids that have migrated from or otherwise been released through the berm.
  - e. Describe the areal extent of water, wastewater or liquids from the US Magnesium property that has flowed onto land owned or managed by the U.S. Bureau of Land Management (BLM).
  - f. Identify the origin of water that has collected on BLM land.
  - g. Provide a copy of communications notifying BLM of releases onto BLM land.
14. Has USM performed analytical testing of water that has flowed onto BLM land? If so, provide the analytical results.
15. Describe the cause of the migration of water, wastewater or other liquids through the northern berm that was installed in CERCLA PRI-8 as part of the AOC.
16. Explain plans to address the migration of water, wastewater or other liquids as identified under contingency planning required in Phase 3 of the AOC.



17. Provide the date(s) earthen material was placed in the SVDD and the quantity of earthen material placed in the SVDD. Indicate the latitude and longitude where the earthen material was placed.
18. Explain why earthen material was placed in the SVDD. Include the name(s), title(s), and contact information for the person(s) responsible for making this decision and for the person(s) who physically placed the material in the SVDD.
19. Provide the location(s) (latitude and longitude) and date(s) of any indication of seepage of pollutants or toxic pollutants from process water, wastewater or other liquids from USM property into the SVDD. Provide the name(s), title(s) and contact information for the person(s) who made these observations and describe what those observations were. Include any photos, reports, communications about or other document with information on the seepage.
20. Describe the names of the waterway(s) reached by the seepage of pollutants or toxic pollutants from process wastewater, wastewater or other liquids. Indicate whether water is currently present or was present in the waterway(s) when the seepage was first discovered. Describe the typical flow of the waterway(s) at the time the seepage was first discovered and the typical flow throughout the year. Include the quantity of flow and the condition (e.g., low, flooded, quiet, turbulent, etc.).
21. Describe the extent that the pollutants or toxic pollutants from process wastewater, wastewater or other liquids reached within the SVDD, the Great Salt Lake, or other waterways. Provide a map or aerial depicting this information.
22. Describe the process that generated the pollutants or toxic pollutants from process wastewater, wastewater or other liquids that seeped into the SVDD. Provide a list of any pollutants, whether toxic or not, pollutant concentrations and other constituents, including pH in the process wastewater at the point of generation and at the point it is released onto any land surface.
23. Describe the cause of the seepage of pollutants or toxic pollutants from process wastewater from USM into the SVDD. Include a description of how the pollutants or toxic pollutants from process wastewater, wastewater or other liquids flowed from the end of USM's process and reached the SVDD.
24. Describe any corrective and/or remedial activities conducted in response to seepage of pollutants or toxic pollutants from process wastewater, wastewater or other liquids from USM into the SVDD including the dates of any activities and the names and contact information of person(s) who conducted the activities.
25. Provide copies of any water or soil sample data from samples taken within or adjacent to the SVDD. Include any sampling plans, chain-of-custody records, laboratory reports, sampling analysis or other sample data. Provide a map showing sample locations.
26. List any federal, state, and/or local agencies to which the seepage or placement of earthen material into the SVDD was reported. State the date and time of the notification and identify the official contacted. Include any identifying numbers (e.g., NRC number, spill number, etc.) assigned by the agency. Provide copies of written communications reporting the seepage or placement of the earthen material.

**NOTARIZED CERTIFICATE**  
**US MAGNESIUM SITE, EPA ID No. UTN000802704, SSID 08-PU**

I, \_\_\_\_\_, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by US Magnesium LLC to respond to the Environmental Protection Agency's (EPA's) request for information concerning the US Magnesium facility located in Tooele County, Utah.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is complete and contains all information and documents responsive to the request.

(Signature) \_\_\_\_\_

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(SEAL)

Subscribed and sworn to me  
This \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

My address is \_\_\_\_\_

\_\_\_\_\_